Decision **ALTERNATE DECISION OF COMMISSIONER KENNEDY**
(Mailed August 1, 2003) (Revised August 19, 2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of AT&T Communications of California, Inc. for a Commission Order Instituting Rulemaking to Adopt, Amend or Repeal a Regulation Pursuant to California Public Utilities Code Section 1708.5 to Implement Cost-Based Intrastate Carrier Access Charges.	Petition 01-10-008 (Filed October 4, 2001)

DECISION DENYING PETITION OF AT&T COMMUNICATIONS OF CALIFORNIA CONCERNING INTRASTATE CARRIER ACCESS CHARGES

Summary

This order denies the petition of AT&T Communications of California, Inc. (AT&T) to institute a rulemaking to review intrastate carrier access charges. The term "access charges" refers to charges imposed by local exchange carriers (LECs) such as Pacific Bell Telephone Company (herein referred to as SBC) on interexchange carriers (IEC) such as AT&T for using the LEC's local exchange network. Interexchange carriers use this switched access to originate and terminate long distance calls to the vast majority of California residential and business customers.

Although we recognize that circumstances have changed since the Commission last made significant changes to access charges in 1994, the Commission will not open a rulemaking proceeding at this time.

AT&T's Petition

On October 4, 2001, AT&T filed a petition pursuant to California Public Utilities Code Section 1708.5 asking the Commission to reduce intrastate access charges. AT&T argues that access charges for SBC and Verizon California (Verizon) should be based on "forward-looking economic costs" consistent with what AT&T perceives to be FCC requirements.

AT&T contends that the Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat 56, codified at 47 U.S.C. §§151, et seq. (Telecommunications Act)) requires the Commission to eliminate disparities in prices charged to IECs and LECs for similar or identical LEC services. AT&T argues that the Telecommunications Act requires cost-based pricing for interconnection services, including the transmission and routing of telephone exchange service and exchange access (Section 251(c)(2)(a)). It proposes that this standard applies equally whether the network function is used for local or switched access purposes.

AT&T contends that switched access is functionally equivalent to call termination for local exchange services. It observes that switched access is comprised of several wholesale network elements (unbundled network elements, or UNEs) and the price for each is currently set based on forward-looking costs. AT&T states that local switching, transport and tandem switching are combined to create access services. AT&T urges the Commission to eliminate what it considers an artificial distinction between "local" and "toll" interconnections and apply the UNE rate to both "toll" switched access and "local" call termination.

AT&T states that access charges were originally set at levels that provide subsidies from long distance services to local phone service. AT&T contends that Section 254(e) of the Telecommunications Act requires that all subsidies be

explicit, and the Commission must bring intrastate access charges into compliance with this mandate.

In support of its position, AT&T observes that the telecommunications marketplace has changed significantly since 1994, when the Commission last examined intrastate access charges. These changes include the Telecommunications Act, local toll competition, adoption of the new costing methods, and FCC reforms to interstate access charges. AT&T also refers to California's Universal Service program, and in particular the California High Cost Fund B, which removed from local rates any implicit subsidies to support basic phone service in high cost areas of the state served by large and mid-sized incumbent local exchange carriers (ILECs). AT&T argues that the change in how universal service subsidies are funded eliminates the need for inflated access charges to support local exchange service. The result, according to AT&T, is that the ILECs are making extraordinary profits from access charges.

In addition, AT&T maintains that the entry by Verizon and SBC into long distance markets requires changes to access charges. It believes SBC's high access charges in combination with its low toll rates does not permit competitors to recover their own costs and still keep their toll prices competitive.

Responses to the Petition

SBC, Verizon, a group of companies known as the "small LECs,"[1] and Roseville Telephone Company (Roseville) filed comments opposing AT&T's petition. The Commission's Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) filed joint comments.

SBC and Verizon comment that AT&T's request to reduce access charges to cost ignores the Commission's long-standing policy of pricing intrastate access charges to promote universal service. AT&T would eliminate this subsidy from access charges to local basic rates but proposes no way to subsidize local service from another source.

SBC and Verizon contend that the Telecommunications Act does not require access charges to be based on TELRIC. They argue that the FCC has found that the Act preserves the legal distinction between long distance access charges and charges for UNEs.[2] SBC and Verizon cite a decision of the Eighth Circuit Court that upholds the FCC's findings in this regard to preserve certain rate regimes already in place.[3] The LECs argue that the Commission is within its discretion to determine how it will ensure affordable local service.

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[1] The small LECs that filed jointly were Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Evans Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

[2] First Report and Order, *In the Matter of Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd. 15,982, para. 1033 et seq. (May 16, 1997).

[3] *Competitive Telecommunications Association v. FCC,* 117 F.3d 1068 (8th Cir. 1997).

SBC contends that AT&T has not proposed a way to ensure that IECs will pass along the savings associated with lower access charges to their customers. It believes access charge reductions will only benefit AT&T shareholders. Verizon contends that AT&T fails to propose ways to offset a rate reduction through increases in other LEC rates, in contravention of Commission policy articulated in D.94-09-065. The small LECS and Roseville raise similar arguments to those presented by SBC and Verizon.

TURN and ORA oppose the petition on the grounds that access charge reform is not a high priority because other regulatory proceedings will provide more immediate ratepayers benefits, among them, the NRF review, the service quality review, review of UNE prices, the line sharing proceeding, and a review of universal service mechanisms adopted in D.96-10-066.

Discussion

For the reasons set out below, this order denies AT&T's petition to institute a rulemaking to review intrastate carrier access charges.

The Commission recognizes that circumstances have changed since access charges have been last modified in 1994. But we agree with the joint comments of ORA and TURN in that the Commission is faced with limited resources and efforts should be expended on existing regulatory proceedings. Such proceedings include the review of the new regulatory framework (NRF), review of unbundled network elements (UNE) rates, the consumer Bill of rights proceeding and review of service quality rules, and also a proceeding on telecommunications infrastructure. These and other ongoing proceedings require the time and attention of Commission staff. We suggest that consideration on this issue be deferred to a later time so as not to funnel valuable resources away from existing proceedings.

Since the FCC is currently considering significant changes to the structure and levels of interstate charges in the context of other forms of intercarrier compensation, it would be prudent for this Commission to address access charges after the FCC has come to a conclusion. The Commission will then be in a better position to make a more informed decision without duplicating efforts.

We note that in order to fully analyze ratepayer impacts resulting from changes in access charges, the scope of such a ratesetting proceeding must be comprehensive. It would not be sensible to open a proceeding with a narrow scope that ignores the interconnectedness of related issues. The completion of ongoing Commission telecommunications proceedings will facilitate the rulemaking on access charges.

Comments on Proposed Decision

The proposed decision of Commissioner Kennedy in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure.

SBC, Verizon, CALTEL, MCI, Citizens Telecommunications Company of California dba Frontier Telecommunications Company of California, Citizens Telecommunications Company of the Golden State dba Frontier Telecommunications Company of the Golden State, Citizens Telecommunications Company of Tuolomne dba Frontier Telecommunications Company of Tuolomne, Frontier Communications Company of America and Electric Lightwave, Inc. (collectively the "Citizens Companies"), the Small LECs, Roseville, and AT&T filed opening comments.

SBC, Verizon, the Citizens Companies, Roseville, the Small LECsprovide comments supporting the legal and policy reasoning of this proposed decision. Their comments emphasize the complexity of the proceeding initiated, the

shortage of staff resources, and the pendency of FCC proceedings addressing the structure of access charges.

AT&T, CALTEL, and MCI oppose adoption of this alternate draft decision. AT&T argues that access charge reform is not as resource intensive as SBC and Verizon allege, that waiting for FCC action is without policy justification, and that the Commission may revise access rates without a comprehensive review. CALTEL agues that an examination of access charges is overdue and that the current charges are anticompetitive. MCI argues that the current access rates are unlawful and that change is needed immediately. Moreover, MCI claims that change is not complex and that the Commission should not wait for FCC action, which it says is already years behind schedule. MCI also argues that current policy creates an anticompetitive "price umbrella" and that there is a potential for a "price squeeze."

Verizon replies that "nothing in the Telecommunicaitons Act, implementing federal regulations, or subsequent case law mandates any particular level of access rates." Verizon cites the FCC's Local Competition Order, which emphasized that exchange access rules remain in effect.[4] Verizon cites a string of FCC regulatory orders that clearly leave discretion over access charge policy in the hands of the states. Verizon concludes by noting that state law does not require access charge reductions, that access charges are related to a complex set of telecommunications policy, and that access charge reductions are not long overdue, and that the "price squeeze" argument of MCI lacks merit. SBC makes similar comments.

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[4] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 (rel. Aug. 8, 1996) (Local Competition Order), at para. 358.

The Citizens Companies bring to the attention of this Commission press reports" that the FCC and federal law enforcement agencies are investigating whether some carriers are avoiding access charges entirely. . ." The Citizens Companies argue that if this Commission investigates access charges, then the Commission should have "the results of these investigations." The Small LECs and Roseville, filing separately, make similar comments.

In our review of the Comments and Replies, we find that the arguments of AT&T and MCI that our current policy fails to comport with current law and regulation lack merit. As SBC and Verizon make clear, current rules were adopted consistent with state and federal law. Further, current law and regulation still grant states the authority to set and maintain access charges. The allegation that prices are "anti-competitive" similarly lack merit, for imputation rules eliminate the potential for an anticompetitive price squeeze.

Despite the arguments of AT&T and MCI, the comments and replies indicate that this remains a policy area fraught with legal, policy, and regulatory complexities.

In summary, we find that the comments and replies sustain our conclusion that the Commission should not open a rulemaking into access charge reform at this time.

Findings of Fact

1. Due to resource constraints and the number of ongoing telecommunications proceedings at the Commission, it is determined that a rulemaking proceeding will not be opened.

2. The Commission will defer the issue of access charges until after the FCC has concluded its consideration of developing a unified inter-carrier compensation regime.

Conclusions of Law

1. Pursuant to Public Utilities Code Section 1708.5, the Commission has authority to consider a petition requesting the initiation of a rulemaking to consider access charge reform.

2. To the extent that the petition requests the initiation of a rulemaking to consider access charge reform, it should be denied at this time.

O R D E R

IT IS ORDERED that:

1. The petition of AT&T Communications of California, Inc. is denied.
2. Petition 01-10-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.